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Practice, civil and criminal

PRACTICE, CIVIL AND CRIMINAL, IN ONTARIO

AN ADDRESS

BY

The HONORABLE
WILLIAM RENWICK RIDDELL, L. H. D., Etc.,
of TORONTO (Justice of the King's Bench Div'n, H. C. J., Ont.)

ANNUAL MEETING

OF THE

NEW YORK STATE BAR ASSOCIATION

NEW YORK, N. Y., JANUARY 20, 1912

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With the Compliments of

WILLIAM RENWICK RIDDELL

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Mr. President and Gentlemen, Brother Members of the New York State Bar Association:

It gives me a very great deal of pleasure indeed to meet you again. May I say, before attacking my subject, that I have been very much interested indeed in the discussion which has just been going on? It illustrates what I have so often said, that the time of the American lawyer is taken up more by constitutional questions in one day than the time of an Ontario lawyer is in a year. Because you know, if you use the word "Constitution" in the sense in which it is used in these United States, the Constitution of Canada may be described by a parody upon that famous chapter on the Snakes of Ireland. "There are no snakes in Ireland." (Laughter.) We have no Constitution in Canada in the sense in which you use the term. The Parliaments in our Dominion, like the Imperial Parliament in England, can within the ambit of their jurisdiction do anything which is not naturally impossible; indeed it is a maxim among our Canadian as among English lawyers that Parliament can do anything except make a man a woman, or a woman a man. (Laughter.)

When I read the announcement that I was to read a paper to this Association I was struck somewhat with terror — and I made up my mind I should at once throw myself upon the mercy of the court and confess immediately that I had no paper. That is due to more than one cause, possibly; in part, perhaps, to the fact that I have my own share of judicial temperament, which, of course, you know is defined by Mr. Dooley somewhat in these words. He says, "Hinnessy, I would like to be a Judge, I have the judicial temperament." Says Hinnessy, "What is the judicial temperament?" Says Dooley, "I don't like work." (Laughter.) But in justice to myself, I cannot say that is the only reason. (Laughter.) One

other reason is that we have still in Ontario an absurd superstition that a Justice of His Majesty's Bench ought to do at least some judicial work — occasionally. (Laughter.) I know it is suggested that some of my judicial brethren disregard that superstition to a very great extent — one of them, indeed, when he received Her Majesty's Warrant appointing him one of Her judges, immediately proceeded to sell his library and buy a new gun. (Laughter.) All of us do not have the courage that gentleman had, we are not so greatly daring, and consequently some of us, at least occasionally, do a little judicial work.

In the short time I was at home since I received the invitation to write a paper on this subject, I was exceedingly busy; and since I left home I have been in a continued series of intellectual debauchery in which there was no "morning after the night before" only because the night before extended into and, as it were, absorbed the morning after: and I have not had time to reduce anything to writing. But it may perhaps console you a little bit to know that some years ago I wrote for my friend, Dr. Lawson, the Dean of the Faculty of Law in the University of Missouri, a short article upon the Courts and the Practice in Ontario. I did not know until I came to this city, and indeed not until yesterday, that he had published it; but you will find some of it in the Forty-fourth Volume of the American Law Review, at page 597. If, however, you or your secretary desire I should write a paper so that it may appear upon your minutes, I shall be delighted to do so as soon as I get home and shake off that temperament which I find growing upon me as years go by, and get a little leisure so I can do so.

The courts in Ontario are all one court (speaking of the Superior Courts). Before 1881 we had two concur-

rent Law Courts and a Court of Chancery. In 1881, following the mother country — and the mother country following the State of New York, because of course the State of New York was the pioneer in that regard — we abolished all the courts then existing in the Province of Ontario, which were the two Common Law Courts, the Court of Chancery and a Court of Appeal; and made one general court, the Supreme Court of Judicature. That we divided in two branches, one the Court of Appeal and the other the High Court of Justice; and the High Court of Justice was divided into three branches or divisions. A fourth Division has since been added to the High Court. A judge can sit in any of these Divisions or in the Court of Appeal; any Judge of the Supreme Court of Judicature may to-day be trying a murder case and to-morrow be sitting in the Court of Appeal or Divisional Court; but as a rule the High Court Judge remains in the High Court and does not sit in the Court of Appeal — although he may do so when called upon by the Chief Justice. In our practice there is no distinction between law and equity, and everything is tried in the same court; where the rules of equity and the rules of law do not agree, the rules of equity prevail — we have abolished (following the mother country) the distinction between law and equity in that regard. With the exception of a few cases, few comparatively in number, although of great importance sometimes, every matter which is brought before the Court is brought by Writ. If you want a will interpreted, or anything of that kind where there are no facts to be determined, then you may bring it before the Court by an originating summons or notice of motion. Sometimes counsel get together and state a case and that may be heard before the Court, without Writ. Feigned issues are not allowed with us; neither is there any compulsory submission to arbitration.

Outside of such cases as I have mentioned, everything is begun by a writ, and that is so whether it be for damages for slander or upon a promissory note or on a mortgage — whatever anybody wants to sue for is sued for by way of a writ. In this writ the cause of action is set out in the most general terms. The writ is served on a corporation by serving an officer of the corporation, on a lunatic by serving the lunatic or his committee or the person in whose charge he is. It may be served on a married woman; because there is no distinction between married women and other women in that regard in Ontario. On the service of the writ, the defendant is given ten days to appear. One may specially appear simply to dispute the amount of damages. If that is done, then it is referred to a master at once to determine the amount of damages without further pleading. If there be a general appearance, the practice is different. Some writs may be endorsed specially, as we call it, that is practically what you might call liquidated claims set out on the writ. If an appearance be entered to a specially endorsed writ, an application may be made by the plaintiff, if so advised, to the Master to strike out the appearance and cause judgment to be entered if he can show that there is no defense. That can be shown by affidavit on the part of the plaintiff himself. If the defendant does not answer that, judgment goes against him. He may answer by affidavit, he may be examined under oath before a master on his affidavit, and if it appears there is really no question at all to be tried, and the appearance is simply for the purpose of delay, the appearance is stricken out and judgment entered. If there is a plausible case to be tried, the Courts do not cause the appearance to be struck out. A statement of claim is delivered by the plaintiff, the statement of claim corresponding to the old bill of complaint in equity or to the

declaration in the common-law courts. The statement of claim, according to our rules, must set out facts, not conclusions of law. All the facts upon which the plaintiff desires to base any claim must be set out and the statement of claim is divided up into paragraphs for convenience. Now, it may be that the statement of claim does not disclose any cause of action. Demurrers in form are abolished; but we have demurrers in substance. Application may be made to the Court to strike out the statement of claim as disclosing no cause of action; and if that appear, judgment will be entered for defendant by the Court, unless the plaintiff is in position to amend. After the statement of claim has been delivered and is not demurrable, using the old expression, *i. e.*, it cannot be struck out, the defendant may not be able to answer, may not be in a position to understand precisely what the plaintiff's claim is, and he may demand particulars. If particulars are not furnished he may have particulars ordered by the Master or Judge. Then he serves and files a statement of defense. The statement of defense must set out also the facts on which the defendant relies for a defense. I am sorry to say — perhaps I ought not to say that I am sorry, because I am one of those who have, collectively, a right to change it if thought fit — I am sorry to say that in our practice where an allegation in the statement of claim is not specifically admitted it is taken to be denied. I think very much better is the English practice in which every allegation in the statement of claim is taken as true unless it be specifically denied.

Again, suppose the statement of defense sets up no real defense to the action, a motion may be made by the plaintiff to strike out the defense and have judgment in precisely the same way as the defendant had a right to move to strike out the plaintiff's statement of claim. As

soon as the statement of defense is in, either party has a right to serve what is called an " Order to Produce," directing the opposite party to produce on oath, all documents, copies of documents, etc., etc., which he has or has had in his possession bearing on the issue to be tried. Then either party may be examined under oath by the other generally upon the whole case. If a corporation be one of the parties to the action, an officer of the corporation is selected by the opponent, who may be examined.

Now, there is a great deal of difference of opinion as to the value of this " examination for discovery " as we call it. In practically every case in Ontario there is an examination for discovery. That increases the cost of the action undoubtedly. I heard the other day, very much to my astonishment, at a meeting of the Ontario Bar Association which I attended before I had the pleasure of meeting you here, one very eminent member of the Bar say that an examination for discovery was absolutely useless except to show the opposite side what one's case was. In my own experience, I did not find this to be the case. My experience (and I know the experience of a great many others practicing at the Bar is the same) was that the " examination for discovery " is an exceedingly valuable proceeding. When you examine the other side for discovery you find out what his case is. It is true you must disclose, to a certain extent, your own case; but that is not always of much importance. I have found that the examination for discovery leads to the settlement of at least one-third and perhaps more of the cases which would otherwise be tried, and I have found it exceedingly valuable. But opinions differ in that regard.

In a great many instances the plaintiff also requires to make application to the Master in order to have particulars delivered. Particulars may be required to be deliv-

ered of the statement of the defense, that is what particular matters the defendant relies on for his defense. When delivering a statement of defense, the defendant may counterclaim for any claim he has against the plaintiff on any cause of action. In an action brought on a promissory note a counterclaim may be brought of a claim for libel — with this provision, however, that if the Court sees that the issues should not be tried together the Court may strike out the counterclaim, or order it to be tried at a different time from the general action.

Then we come down to the trial. We have the jury system the same as you, but I do not think we are quite so — I shall not say crazy, I know better than to say that to lawyers — but we are not so *wedded* (that is a good word) to the jury system as you are. There are certain cases such as malicious prosecution, libel, slander, actions of that character which are tried by a jury unless both parties agree that they be tried by the Judge. In most instances they are tried by the jury — I mean, false imprisonment and that sort of thing. Equitable issues which before the Judicature Act of 1881 were tried in the Court of Chancery, are tried by the Judge alone, unless the Judge directs them to be tried by the jury. It may sometimes happen — I dare say it happens in the experience of every lawyer — that an equitable issue, an issue that is really equitable, comes up and after all it turns out to be a pure question of fact, it turns out that the case will depend upon the determination of a question of fact, and that perhaps upon the credibility of two witnesses; and a Judge sometimes likes to cast the responsibility upon a jury and let a jury find out which one of those two men is lying, if not both of them. Accordingly the Judge has the power to direct even an equitable issue to be tried by a jury.

Outside of these I have already spoken of every issue in our High Court of Justice, or in our County Courts, may be tried by a Judge if he sees fit. If either party to an action desires a case to be tried by a jury rather than by a Judge, he files what is called a jury notice. If no jury notice is filed the case goes on the non-jury list and is tried without a jury unless a Judge sees fit to transfer it to the jury list. If a jury notice be served, the case goes on the jury list, and when it comes down for trial the Judge may say, "I will try this case myself," and there is no appeal from that. The Judge is absolute master of the situation. Sometimes a plaintiff or defendant asks that the jury notice be dispensed with and the case tried without a jury. Sometimes both of them agree it should not be tried with a jury, sometimes they have agreed it ought to be tried by a jury; but whatever they may say, the Judges have it in their own power to try a case without a jury; in a very great majority of cases the cases are tried without a jury except those particular cases I have mentioned, and added to that, accident cases, which are becoming more and more frequent.

The old French system, the Canadian system before 1759, was to try all issues without a jury and by Judges alone. When Canada was conquered in 1759 by the British, and particularly in 1763 when the Royal Proclamation was issued, the English law was introduced and juries were introduced also. The French Canadians could not understand how the Englishmen would sooner have their property rights determined by the agency of tailors and shoemakers than by Judges. That same idea is still prevalent in Lower Canada, Quebec; and it is becoming more and more prevalent in the Province of Ontario, and we are trying fewer and fewer cases by juries every day. If a case is tried by a jury ten are required to agree in

order to find a verdict. If a jury should not agree, the Judge may discharge them and either put the case over or call another jury. I follow either practice, according as it seems to me more convenient. Sometimes when a case has taken a long time and other litigants have been waiting with their witnesses, it does not seem fair to give these people whose jury have disagreed another chance at the expense of those who have been waiting. Sometimes it seems to be absurd to postpone to a future assize a case which ought to be tried forthwith, and we call a new jury; or what is more likely to be the case, we discharge the jury and try it then and there and thus dispose of it.

If the jury finds a verdict, the Judge has no power to award a new trial. There must be an appeal.

An appeal may be taken to the Divisional Court of the High Court of Justice. The Divisional Court consists of three Judges. We have four Divisional Courts, and any member of any Divisional Court may sit in any Divisional Court. When counsel, as they sometimes do, skirmish for Judges — I suppose that is entirely unknown in your practice,— but it is said that in Ontario they do, and they postpone their cases not uncommonly, it is said, on account of the absence of necessary and material Judges. (Laughter.) Now, I am glad that excites your amusement, because it proves to me you cannot have anything of that kind in your practice — when counsel have skirmished for Judges, very often they find that very Judge whom they are anxious to avoid sitting up in the Divisional Court smiling at them. The grounds of appeal to the Divisional Court are very much as in your appeals here, verdict against evidence, against the weight of evidence, surprise, absence of witnesses, exclusion of evidence and admission of evidence, and all that sort of thing. We do not have very much bother about admis-

sion or rejection of evidence in our Courts; unless we can see that the exclusion of evidence or the admission of evidence has led to some injustice, then we pass it by. Matters of law as a rule are the determining matters in the Appellate Court; although there are occasionally cases in which appeals succeed upon the ground of the non-admission of evidence, or the admission of evidence which ought not to have been admitted. If a case is tried before a Judge, and he has improperly rejected evidence — and I may say that this is the rarest of all contingencies, because as a rule we admit the evidence subject to objection, and then we never allow it to influence our mind, of course — if a Judge has refused the evidence improperly, the Divisional Court as a rule does not send the case back for a new trial, but the Court often says, " We will sit on such a day, you can bring the evidence you desired the Judge to hear and we will hear it here." We hear the evidence and determine the case then and there, without sending it back with all the risk, expense, inconvenience, annoyance and trouble of a new trial. (Applause.) If there is a row about the pleadings — because even yet we have some people who talk about pleadings, though pleadings are pretty nearly defunct in our Courts, we know them by name and know them by sight, but we pay very little attention to them — if there is any row about the pleadings we say, " Very well, we will amend the pleadings." If a lawyer says, " If that amendment had been made in the Court below, we should have had other evidence," we may say, " Very well, what day will suit you? We shall hear your witnesses." One of our substantial rules and one of the rules more beneficial than perhaps fifty of the other rules is this, all amendments are to be made which are necessary in order that judgment shall be given according to the very right and justice of the case. (Applause.) No case in Ontario

fails from defect of form — that is one of our rules. Again, no disregard of forms laid down, or disregard of the time under which certain proceedings should be taken, no disregard of terminology, according to our practice, bars a man who has a right, of his right. Disregard of form does not nullify the proceedings.

Then if the Divisional Court is thought by either party to have made a mistake, there is an appeal to the Court of Appeal composed of five Judges. Those appeals are heard by the full Court of five Judges, but are not very common. The more common practice is to appeal from the trial Judge direct to the Court of Appeal, skipping the Divisional Court; and those are not so very common either. These appeals from the trial Judge to the Court of Appeal direct may be heard by three Judges of the Court of Appeal or all the five. I will read you from the article which I wrote some years ago of the appeals in 1908. "In 1908, 1,153 cases were tried by the High Court, 180 of these were appealed to the Divisional Court and 130 dismissed, 37 allowed, 10 varied and 2 still undisposed of. The appeals direct from trial to the Court of Appeal were 62; 28 were dismissed, 14 allowed, 8 varied, 12 remained undisposed of." Because even at that late date people tried to settle their cases.

All appeals from the County Court, which has jurisdiction up to six or eight hundred dollars, come to the Divisional Court, as appeals from the High Court of Justice comes to the Divisional Court. County Court Judges are members of our Bar of ten years' standing. They are appointed by the Dominion Administration for life. The practice is precisely the same as in the High Court. Of all the cases in the Divisional Court, 544 in all, including the 180 from trials, only 43 appeals to the Court of Appeal, of which 23 were dismissed, 11 allowed,

3 varied. The above figures are derived from the report of the Inspector of Legal Offices. From the Court of Appeal to the Supreme Court at Ottawa in 1908 are reported in the Supreme Court Reports, 9 cases, 7 dismissed, 2 allowed (there maybe, no doubt are, some cases not reported, but very few).

From the Court of Appeal, important cases may be taken to the Supreme Court of Canada. Rarely is there an appeal from the Divisional Court to the Court of Appeal; still rarer is there an appeal from the Court of Appeal to the Supreme Court of Canada, which is an entirely different Court. If you practice in Canada you had better have your pleadings in proper shape before you get to the Supreme Court of Canada because that being a different Court, it takes the pleadings as brought to it from the inferior Court. From the Court of Appeal to the Supreme Court at Ottawa in 1908 there were reported in the Supreme Court Reports nine cases, seven dismissed, two allowed. In very rare cases there are also appeals from our Court of Appeal which are taken across the Atlantic instead of going to the Supreme Court of Canada — and particularly in constitutional cases (because I am going to withdraw what I said about the Constitution a minute or two ago) — an appeal is taken to the Judicial Committee of the Privy Council in Downing street, Westminster. We have a kind of constitution (although we do not call it that) by the British North America Act. The subjects of legislation are divided between the provinces and the Dominion, and sometimes we have disputes as to whether the Dominion has the right to pass legislation upon a particular subject, or whether the province has a right to pass legislation upon that particular subject; we do not, however, generally talk about "constitutional" and "unconstitutional," but we use the terminology "*ultra vires*" and

"*intra vires.*" Occasionally and, as I have said, particularly where a question of *ultra vires* is concerned, an appeal is taken to the Privy Council. I have given an account of the Privy Council in an address to the Missouri Bar Association, printed in 44 American Law Review, page 161. In the Privy Council in 1908 are reported six appeals from the Court of Appeal, of which five were allowed and one dismissed; there was also an appeal from the Supreme Court in an Ontario case which was allowed. From issue of the writ of summons to the final disposition by the Privy Council there is no need for two years to elapse. So much for the civil practice.

On the criminal side the story is somewhat historical. When Canada was conquered in 1759 the French law was universal; it was of course based upon the Roman law, the Civil Law. As soon as the British conquered Canada, the English criminal law was introduced and the English criminal law has continued from that time to the present. The criminal law is under the jurisdiction not of the provinces, but of the Dominion Parliament composed of members from all the provinces. It is true that Provincial Legislatures have power to make certain quasi criminal offenses — for example, the watering of milk and that sort of thing which are quasi civil and quasi criminal — those are within the jurisdiction of the province, although the Dominion may make anything a crime. The other day I said to a lawyer who was arguing to me about a certain matter being *ultra vires,* "If the Dominion Parliament saw fit they could make it a crime punishable by capital punishment for a man to chew tobacco." The Dominion has power to make anything a crime; it has absolute jurisdiction over criminal law and criminal procedure; but not over the constitution of Courts of criminal jurisdiction. The Courts of criminal jurisdiction are constituted by the

provinces; so that (speaking generally) the same Court which tries civil cases is the Court which tries criminal cases.

Before 1892 we had the English criminal law as modified by the statutes of the provinces before Confederation and by the Parliament of Canada after Confederation; but in 1892 Sir John Thompson, the then Prime Minister, having been a Judge himself in Nova Scotia, saw the propriety of codifying the criminal law and accordingly, with the assistance of able lawyers in the Houses of Parliament on both sides of politics, he in 1892 drew up a code of the criminal law. The Judicature Act of 1881 very nearly proved the death of some of the old equity men and common law men also in the Province of Ontario; but that was nothing to the dismay which spread in the ranks of the lawyers who practiced in the criminal Courts, when the Code of 1892 was passed. The distinction between felonies and misdemeanors was abolished. Every crime was made an indictable offense. All the beautiful little pitfalls and holes that old criminal lawyers used to know so well about in indictments, etc., are filled up and done away with. Parliament provided that the indictment might be in the simplest form, so long as it set out and explained to the alleged criminal what it was he was charged with. If the indictment used the words of the statute that was enough. For instance, an indictment for murder is never more than three lines long, and it would read like this, " The jury for our Lord the King present that John Smith on the 7th of September, 1911, at the City of Toronto, murdered Tom Jones." That is all there is about it. There are no pitfalls in the criminal law.

If a person is charged with a crime, an investigation is made by a magistrate, sometimes by a coroner. Under the old practice, of course, the finding at the coroner's

inquest could be laid before a petit jury. That is no longer our law. Everything of a criminal nature which is to be tried by the High Court comes before a grand jury. The accused first comes before a Magistrate; he has the right to have his full defense gone into, witnesses called and examined; and if at the conclusion the Magistrate thinks there is no case, he is dismissed — although the prosecutor may demand to be bound over to prosecute, in which case he comes before the next Court of competent jurisdiction. If the Magistrate thinks a case has been made out, he commits for trial.

Save in the case of treason, murder and a few others, within twenty-four hours of a person being committed to jail he must be brought before the County Court Judge. The County Court Judge is a Judge of inferior jurisdiction, but he must have been a barrister for ten years before his appointment and ought to know as much law as a High Court Justice — and many of them do. Upon being brought before the County Court Judge, the alleged criminal is told in simple language with what he is charged. He is told, "Now, you have a right to be tried by a jury before the next Court of competent jurisdiction" (mentioning the Court, when it is to be held, etc., so that the prisoner will know), "or you may be tried by me forthwith without a jury." In nine cases out of ten the innocent man, and in quite a number of cases the guilty man, thinks he might just as well take his chances with a Judge as with a jury; and so he is tried by the Judge. A simple form of charge is drawn up, and the Judge tries him; that is all there is to it. So you see, this practice of "Speedy Trials" as we call it, relieves the High Court of Justice of nearly all the criminal cases with the exception of murder and a few others. We have not had treason for some years in Canada and we are not likely to have

another crop for some time. If, however, the accused elects to be tried by a jury, the case is brought before a grand jury (in Ontario of thirteen). Seven may find a bill. The bill is drawn up in the form I have described.

The trial is before a jury of twelve; they must be unanimous either one way or the other. If a jury cannot agree I almost always discharge them and call another, right there and then, and get done with it. Some Judges prefer rather to postpone the case to the next assize and in the meantime commit the man to jail or let him out on bail. If a mistake is made at the trial, or a lawyer thinks a mistake is made in the trial — these are not quite synonymous expressions, you know — if it is supposed (that is better) (laughter) that a mistake has been made during the trial on questions of law, the lawyer may ask the Judge to reserve the case for the Court of Appeal upon that question of law, or the Judge may do it upon his own motion without being requested to do so. The Judge may refuse; that refusal is subject to appeal. If he has granted the case, that goes to the Court of Appeal, and the Court of Appeal of five Judges determines that question of law and whether the Judge was right. In most cases I am glad to say it has been found he was right, and so the appeal goes by the board. There is a provision in our Code which has never so far as I know been called upon; and that is this: in case the conviction be affirmed by the Court of Appeal by a divided Court there is an appeal to the Supreme Court of Canada. That has never yet so far as I know been called into practice: our Court of Appeal have always been unanimous.

This is the simple, every-day practice which has been found very advantageous and beneficial. I have never in all my thirty years's experience at the Ontario Bar and on the Bench taken more than thirty minutes to find a jury,

even in a murder case. I have never yet — and I have defended lots of them and I have hanged quite a number; I do not mean that I did it with my own hands — I trust that I should not hesitate to do it if it were my duty; greater men than I have been charged with having exercised that function — none of the men that I defended got hanged I am thankful to say, though there are two or three in Kingston penitentiary to welcome me when I chance to go there (laughter) — I have never yet in all my experience (except in one case) seen it take as much as four days to try a murder case. In murder cases before me I have never been more than a day and a quarter, and in most cases less than a day. We allow five expert witnesses on each side and that is all. An expert witness unless he has examined the prisoner himself is, of course, simply going to give opinion evidence. We bring him in Court to listen to the evidence. If he requests it he may take the man and examine him and then give an opinion. We do not have six or eight pages of a hypothetical question. The expert is asked simple, particularized questions. Our insanity law is simple. I see that my judgment was affirmed by the Court of Appeal since I came to this city in a case where a man was charged with murder. The man waited for another on the street and shot him. The first doctor for the defense was called and was asked, "Was this man insane?" "Yes, insane." "In what form?" "An incurable form of insanity, paranoia in an advanced stage." "Did he know the nature and quality of his act?" "Certainly." "Did he know that what he was doing was wrong?" "What do you mean by wrong?" says the doctor. I said, "Wrong in the sense of being against the law." He says, "Yes, undoubtedly." "What then was his mental condition?" "He knew what he was doing, he knew it was against the law, but he

had an irresistible impulse to do that act, his power of inhibition was gone and he could not help shooting the man." The other doctors agreed. I charged the jury, "If you believe what these doctors say, or rather unless on your oath you think you know better than these doctors, then it is your duty to find a verdict of guilty. We are an iron people and we have an iron law. We must enforce the law as we find it. You have no more right to change the law than I have, and I have no more right to change the law than your minister has a right to take the word 'not' out of some of the commandments and tell you to obey the commandment as so amended — to go and lie, steal and murder. Our law is, if a man, however insane he may be, knows what he is doing and knows that that is against the law, it makes no difference that he is insane — he must not be found not guilty on the ground of insanity. Our law says to a man who alleges he has an irresistible impulse, 'I shall hang a rope up in front of your nose and see if that won't help you some.'" (Applause.) We are not troubled much with expert witnesses. (Laughter.) If an expert witness attempts to give an opinion as to what ought to be done with the accused, he is checked — that is none of his business, it is not for him or for me, it is for the Executive to say.

Our civil practice we have found very convenient, very speedy. Please do not imagine I am up here to boast about my own country or find fault with any other — but we have found our civil practice very speedy, and a man can have his case tried just about as soon as he wants to. In ninety-nine cases out of a hundred the delays are due either to the client or to lawyers who do not want to have the case tried. They are skirmishing for a settlement or looking out for something else. There is no reason why a case should not be tried within six months of the writ or less. The first

case that ever came before me for determination that went to the Privy Council, I heard in April, and in June of the following year it had gone through all the Canadian Courts, and had been finally determined by the Privy Council. There is no reason why any case should not be concluded in our country in less than eighteen months. There is no reason why a man who has met with an accident should not have his case tried anywhere throughout the country in less than six months. The practice, as I have said, we have found convenient.

There are two ideas which are the basis of the practice of law in different countries: one is that the Courts are a sort of umpire sitting up on the watch to see that the two men fight out this dispute according to the rules of the game. It is not a matter of very great importance whether a man gets his rights or not, but it is a matter of enormous importance that the smarter man should get a verdict. That is the old idea. The other idea is that a man should get his rights even although the record gets in a shocking state. You remember when they talked about the English Common Law Procedure Act, Baron Parke said, "Think of the state of the record'." Rec'ord I suppose I ought to call it on this continent, "Think of the state of the record." That was the old idea. The learned Baron suffered greatly. It is fair to say he had a new lease of life when he moved in the House of Lords as Lord Wensleydale.

You will, no doubt, remember Sir William Erle, when Baron Parke said, "My monument is to be found in the sixteen volumes of Meeson and Welsby," replying, "Parke, if there had been seventeen, the people of England would have risen up and wiped out the Courts entirely." (Wise's Index had not then been published, and so the Courts escaped extinction.)

The other theory is that Courts are instituted to do justice between man and man, to see that every one gets his rights irrespective of the way in which his lawyer asks for them. Accordingly, the present practice which we try to follow — and our rules are laid down specifically in that view — is to get out what the facts are and if the pleadings do not enable the parties to prove or rely upon these facts, amend the pleadings. If one party is inconvenienced or put to disadvantage, make him who has made the mistake pay the costs. Amend your pleadings, get out all the facts that bear on the issue and determine the matter according to the very rights and merits of the case. It is the client, after all, who has to pay the shot, and it is the client that should be considered, what harm if the record does get a jolt now and then.

I know too many lawyers, and perhaps too many Judges, look upon the client as a simple Scotsman looked upon his wife. Donald met Sandy one day and said to him, " Sandy, ye're lookin' verra glum." " Aye," said Sandy, " ma wife's deid." " Oh, man, an' hoo did that happen? " " Weel, ye see," said Sandy, " about a week ago, I was waukened up i' the middle o' the nicht be the woman grainin' unco' grievous — an' I says to her, ' What's wrang wi' ye, woman? ' and she said, ' Man, but I'm verra seek, wull ye no gang for the doctor? ' and I said, ' I canna gang for the doctor in the middle o' the nicht.' But she lay there grainin' sae bad that I could na' sleep, and I happened to think o' some pooders the doctor had left for me the day afore; and sae I got up an' lookit at the directions, an' it said, ' Take ane every three hours,' an' I thocht she was that bad that I had better gie her eneugh — sae I gied her three at ance, an' in half an hour she was deid, stane cauld, an' I had to gang for the doctor in the middle o' the nicht after a'. Weel, I buried her, an' I'm unco' lonely, for while she had her

fau'ts like a' folk, she was a guid wife, tak' her a' thegither; but was it no' God's mercy I didna tak' thae pooders mysel'?" (Laughter.)

In the theory of law we first mentioned the lawyer may have the misfortune and mortification of losing a righteous cause by technicality; but it's God's mercy that he is not personally ruined or deprived of his rights. That is the part of the unhappy client.

Now, gentlemen, if you really desire and so express a desire through your Secretary, that I should write you something on our practice I shall be glad to do so. Perhaps what I have said will be sufficient. I thank you. (Applause.)